



POLICE DEPARTMENT

CHAN

In the Matter of the Disciplinary Proceedings

- against -	:	FINAL
Detective Alan Figueroa	:	ORDER
Tax Registry No. 933778	:	OF
Military and Extended Leave Desk	:	DISMISSAL

Detective Alan Figueroa, Tax Registry No. 933778, Shield No. 2388, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 85399/09, as set forth on form P.D. 468 121, dated June 30, 2009, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Alan Figueroa from the Police Service of the City of New York.

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: September 21, 2012

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

*The
City
of
New York*

August 17, 2011

In the Matter of the Charges and Specifications : Case No. 85399/09

- against - :

Detective Alan Figueroa :

Tax Registry No. 933778 :

Police Service Area 2 :

X

At: Police Headquarters
 One Police Plaza
 New York, New York 10038

Before: Honorable Martin G. Karopkin
 Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Mark Berger, Esq.
 Department Advocate's Office
 One Police Plaza
 New York, New York 10038

For the Respondent: Roger S. Blank, Esq.
 Attorney-At-Law
 373 Park Avenue South, 6th Floor
 New York, New York 10016

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on June 28, 2011, and June 29, 2011, charged with the following:

1. Said Detective Alan Figueroa, assigned to Narcotics Bureau Queens, while on-duty, on or about January 5, 2008, in Queens County, while working in a Ghost capacity during Narcotics Division Buy Operation(s), did fail to prepare DD5 report(s), as required.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT

BOTP 40-15, Page 4, Paragraph H BUY OPERATION TACTICAL PROCEDURE

2. Said Detective Alan Figueroa, assigned to Narcotics Bureau Queens, while on-duty, on or about January 5, 2008, in Queens County, while working in a Ghost capacity during Narcotics Division Buy Operation(s), did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did commit Official Misconduct by committing an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized, with intent to obtain a benefit or deprive another person of a benefit, to wit: said Detective did, with others known to the Department, unlawfully conspire and agree together to fabricate the facts leading to the arrest of four individuals, known to the Department, for criminal sale of a controlled substance. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
Penal Law § 195.00 OFFICIAL MISCONDUCT

The Department was represented by Mark Berger, Esq. and Louis Bara, Esq., Department Advocate's Office. The Respondent was represented by Roger Blank, Esq. The Respondent, through his counsel, entered a plea of Guilty to Specification No. 1 and Not Guilty to Specification No. 2. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pled Guilty, is found Guilty of Specification No. 1. The Respondent is found Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

Upon commencement of trial, the parties stipulated that the following exhibits be entered into evidence: Department's Exhibit ("DX") 1 is the DVD surveillance video of the Delicias de mi Tierra club; DX 2 is the O.C.C.B. Buy Report ("buy report") prepared by Stephen Anderson; DX 3 is the buy report prepared by Henry Tavarez; DX 4 is Anderson's Cooperation Agreement; DX 5 is the tape and transcript of the Respondent's official Department interview (dated June 29, 2009); DX 6 is a deposition provided by the Respondent (dated July 9, 2010); Respondent's Exhibit ("RX") A is the Queens County Supreme Court indictment against Anderson and Tavarez; and RX B is the videotape and transcript of an interview of Tavarez, conducted by the Internal Affairs Bureau and District Attorney's Office on June 24, 2008.

The Department's Case

The Department called Lieutenant Edward Rodriguez, Stephen Anderson, and Lieutenant Vito Ardito as witnesses.

Lieutenant Edward Rodriguez

Rodriguez is currently assigned to the Internal Affairs Bureau ("IAB") Group 41. He has been assigned to the group for 10 years and was working as a team leader in June 2008, which is when he became involved in an investigation regarding the Respondent. The investigation began with a notification from the Integrity Bureau Chief of the Queens District Attorney's ("DA") Office that there was an allegation of misconduct involving undercover officers who conducted a "buy and bust" operation inside the Delicias de mi Tierra cabaret club on January 5, 2008. The alleged misconduct consisted of a disputed arrest and flaking, which Rodriguez explained as

occurring when an officer “introduces[s] drugs into evidence against a person, charging them with possession or sale of that narcotic.” The DA informed Rodriguez that there was a surveillance video that challenged the veracity of a buy report prepared by the undercover officers in the case.

Rodriguez testified that on the night of the incident, Stephen Anderson, who was a detective at the time, bought three Ziploc bags of cocaine from the club waiter, Julien Martinez. Anderson documented one of the bags in a buy report and gave the two remaining bags to Henry Tavarez, who at the time was another officer on the team. Tavarez used the bags of cocaine to charge four individuals who were inside the club. (The arrestees were subsequently identified as Person A [REDACTED] Person B [REDACTED] Person C [REDACTED] and Person D [REDACTED].) From interviews of people inside the club that night, Rodriguez concluded that the four individuals written up in Tavarez’s buy report were not part of the narcotics sale and were innocent. [DX 2 is a copy the buy report that was prepared by Anderson. Anderson documented on this report the drug sale involving Martinez and a Gabriel Lira. DX 3 is a copy of the buy report that was prepared by Tavarez.]

As part of his investigation, Rodriguez also reviewed the surveillance video [DX 1]. The video was viewed in the courtroom, and Rodriguez pointed out when Persons B & C [REDACTED] and Person A [REDACTED] entered the club at 44 minutes into the tape. He also pointed out when the undercover officers entered the club a minute or two later, and the Respondent headed toward the bathroom. Rodriguez said that three undercovers were sitting at a table, talking to Martinez. Based on his investigation, Rodriguez believed they were already engaged in a narcotics-related conversation which started as soon as they entered the bar and sat down. Rodriguez stated that the Respondent was called back from the restroom by Tavarez. Martinez was still in the back speaking to Tavarez when the Respondent returned to the table. At 46:58 in the video, Martinez

can be seen in a white shirt and scull cap tapping his hand at the bar area. At 47:20, the Respondent walked back to the restroom area and stayed there for approximately two and a half minutes. Rodriguez noted the Respondent leaving the restroom at approximately 49:30. Based on his prior review of the video, Rodriguez did not believe that any drug sale had taken place at the point of 49:37. Rodriguez recalled the drug sale took place around 1:03:45. At 1:03:45, Rodriguez pointed out Martinez at the front of the club, near the entrance, in between the deejay booth and the door. Persons B & C were still by the bar at the rear of the club. Martinez leaned over the table with the undercovers at that point and Rodriguez believed that the narcotics-related conversation became a positive buy and the narcotics were exchanged. At approximately 1:10:34 the Respondent is seen walking toward the back of the club toward the bathroom and subsequently followed by Anderson. The two remained in the bathroom for approximately three and a half minutes. At 1:14:04, the video showed Anderson and the Respondent following close behind, heading back toward where they were sitting at the front of the club. Martinez was still seen at the front of the club near the table. Rodriguez stated that the undercovers remained in the bar another six minutes and then noted when the undercovers got up and exited the club at 1:20:40.

Rodriguez testified that at no point in the video did Anderson or Tavarez interact in any way with the four men who were wrongfully arrested. At no point did any of the four men approach the undercovers' table. Rodriguez testified that his investigation concluded with a determination that the report prepared by Tavarez was indicative that the undercovers never made contact with the four individuals who were arrested. It was also determined that the narcotics purchased by Anderson were not vouchered properly. Anderson's report incorrectly stated that only one Ziploc bag of cocaine was purchased. Rodriguez stated that as a result of the

investigation, IAB arrested Tavarez and Anderson. [RX A is the Queens County Supreme Court indictment against Anderson and Tavarez.]

On June 29, 2009, Rodriguez conducted an official Department interview of the Respondent. [DX 5 is the interview tape and transcript.] Rodriguez stated that when interviewed, the Respondent provided vague information and could not recall any of the facts of the incident. Rodriguez said he had informally interviewed the Respondent as well on June 24, 2008 for a criminal investigation. During the June 24 interview, approximately five months after the date of the incident, the Respondent was not able to recall the details of the incident. Rodriguez stated that the criminal prosecutions that arose out of the arrests of the four men who were wrongfully accused were dismissed, as were the criminal prosecutions of the two people who actually did sell drugs that day.

On cross-examination, Rodriguez agreed that the narcotics were obtained by the waiter from the deejay at Delicias de mi Tierra. Rodriguez also agreed that Person A was by the entrance of the club, near the deejay booth, at certain times throughout the night.

With regard to the interview Rodriguez conducted with the Respondent on June 24, 2008, Rodriguez stated that he showed the Respondent somewhat limited clips of the surveillance video. He did not show the Respondent the entire length of the video. Rodriguez admitted that this is a case in which the Respondent did not purchase narcotics inside the location, nor did he do any of the paperwork regarding the incident.

Rodriguez admitted that it was possible for a drug transaction to take place in the two and half minutes that the Respondent was in the bathroom. He also admitted that it was possible for the drug transaction to have taken place in the bar without the Respondent ever having seen it occur.

When asked about the layout of Narcotics Borough Queens at the time of the occurrence, Rodriguez stated that there were two different floors with rows of desks for the undercovers. Rodriguez was not familiar with the specific locations of the computers.

Rodriguez agreed that during his initial investigation, the only misconduct he found regarding the Respondent was a failure to do a Complaint Follow-Up Report ("DD-5"). He stated that charges against the Respondent were amended to include new allegations by Anderson after Anderson made a deal with the Queens DA's office and implicated the Respondent. Rodriguez stated that additional corroboration came in such as Anderson's testimony, an interview of the witnesses Martinez and Gabriel Lira, and Anderson's testimony during the proffer session. In addition, Tavarez provided an emotional and very detailed video statement explaining the details of what occurred inside the location [RX B is a copy of the video and transcript of Tavarez's statement]. Rodriguez stated that Tavarez's statement was detailed only regarding his own misconduct and the misconduct of Anderson. He agreed that Tavarez stated that the misconduct that occurred was misconduct between himself and Anderson and excluded the Respondent.

Rodriguez acknowledged that he conducted a control meeting between Tavarez and Anderson. Rodriguez agreed that during the meeting Tavarez in sum and substance said, "All this nonsense for two hours of overtime," and that Anderson did not verbally disagree with the statement. Rodriguez later asked Anderson during his proffer if the alleged misconduct was done to earn overtime and Anderson did not specify the motive, whether it was for overtime or if there was another reason. Tavarez pled guilty to acting in concert with Anderson and claimed that the Respondent typed his own reports separate and away from him and Anderson.

Rodriguez stated that at the Respondent's official Department interview and the informal interview six months after the incident, the Respondent initially tried to deny that he had any of the responsibilities of a "ghost." Rodriguez explained that ghosts are responsible for the safety of the undercovers, memorializing what they observe the undercovers do and transmitting the undercovers' actions to the field team. From the bathroom, the Respondent transmitted to the sergeant that positive buys had been made and that a number of people were being arrested. At one point, Anderson was with the Respondent in the bathroom. The Respondent has consistently denied participating in any misconduct. The Respondent has not been the subject of prior Department discipline.

On redirect examination, Rodriguez testified that while at the table the Respondent was mostly facing the wall.

Stephen Anderson

Anderson, a former Department detective, had been employed by the Department for approximately eight years. He ended his employment with the Department in May 2008 to work for the Nassau County Police Department. Anderson is currently employed as a construction worker.

In January 2008, Anderson was assigned to Narcotics Borough Queens as an undercover officer. He had been working as an undercover for approximately three years. Anderson stated that in those three years as an undercover, he had made a couple hundred drug buys. The buys consisted of random buy and bust operations and planned out case buys. He explained that a case buy, also known as a controlled buy, is one in which multiple buys are made to build up a better case before an individual is arrested. Anderson explained that on occasion, buys take

place indoors and when the buy is completed, usually the ghost or the primary undercovers will communicate to the field team a description of the person, what they are wearing, and where they are situated inside the location. After a positive identification is made, an undercover will prepare an expense report, a buy report, a voucher, and a DD 5. A DD-5 is most likely written by the ghost and would state whether or not they observed an individual give the undercover drugs, where the location was, and the description of the person. A buy report includes the location of the buy, individuals involved in the buy, and a brief summary of what occurred during the buy. Anderson admitted that before January 2008, he had falsified information in buy reports. He stated that falsification sometimes occurred while he was working with partners but that he never attempted to do so without his partner's knowledge. He explained that if his partner was not "on the same page" as him, it would be reported to the supervisor and Anderson would be arrested for falsifying paperwork.

Anderson recalled that on January 5, 2008, he was working as an undercover with Tavarez and the Respondent. They were assigned to enter that evening the Delicias de mi Tierra bar and club. Prior to that day, Anderson had worked with the Respondent multiple times a week for almost a year and a half. Anderson testified that the two were friendly and would socialize outside of work. Anderson testified that on January 5, 2008, he entered the bar with the Respondent and Tavarez at approximately 12:45 a.m. Upon entering the location he was greeted by the waiter whom he had met at a previous time on an attempted buy. Anderson stated that he and the Respondent began talking to the waiter, letting him know that they were looking to purchase cocaine that evening. The waiter was having trouble understanding Anderson's Spanish and the Respondent was helping by interpreting what Anderson was saying. Anderson stated that at some point the three undercovers sat down at a table by the door and the deejay

booth. Anderson had his back to the door, the Respondent was sitting to Anderson's right, and Tavarez was sitting directly in front of Anderson. Tavarez was facing the entrance door and the Respondent was facing a wall.

Anderson testified that he personally observed the waiter get three bags of cocaine from the deejay and deliver it to the undercovers' table. The Respondent and Tavarez were still sitting with Anderson as the transaction occurred. Anderson testified that following the transaction a conversation ensued where the Respondent asked Anderson, "Why don't you hook up Tavarez?" Anderson stated that he believed the Respondent to mean that he should give Tavarez some of the cocaine for a buy. Anderson explained that Tavarez had been assigned to the unit for a few months and was having a lot of trouble making buys. He had only a couple of buys at the time and his supervisors were threatening to send him back to his previous command.

Once the Respondent told Anderson to hook Tavarez up with a buy, Anderson gave two bags of cocaine to the Respondent who then gave them to Tavarez. The three undercovers then decided that they needed to attach a body to the buy for Tavarez. Anderson stated that he suggested someone but the Respondent and Tavarez did not accept his suggestion. Anderson stated that he became aggravated and thought the Respondent and Tavarez were being picky so he did not suggest anyone else. He stated that Tavarez and the Respondent decided to attach the buy to individuals who were standing by the bar. Anderson stated that he and the Respondent then went to the restroom where they contacted the field team to let them know that there were positive buys in the location and that they would be exiting shortly. The Respondent was not able to communicate with the field team while sitting at the table because they were surrounded by civilians at the bar.

After the undercovers left the bar, six individuals were arrested. Anderson, Tavarez, and the Respondent went into the undercovers' unmarked car. Anderson was driving the vehicle and he stopped in front of the location. According to Anderson, the Respondent, who was sitting in the front passenger seat, verified the individuals involved in both of the buys before they left the location to return to Narcotics Borough Queens. Once back at the office, Anderson prepared the buy report for the buy with the deejay and the waiter, and Tavarez completed a buy report implicating the four other individuals. According to Anderson, the Respondent was present at the time Tavarez was typing his buy report. The Respondent also completed a buy report for his buy from earlier in the night. Anderson stated that at that time it was not mandatory for the Respondent to prepare a DD-5 for the night because the supervisors did not want to pay for overtime. He believed that later on, it became mandatory to prepare a DD-5.

Anderson testified that a few days after the buy, he and the Respondent were at work when Tavarez informed them that he was told a letter stating that there were cameras in the club had been dropped off at the command. Tavarez was concerned about the false buy. In June 2008, IAB initially questioned Anderson about the case. Anderson stated that he was not truthful with IAB when they first questioned him because he was scared and did not want to get in trouble. In January 2009, Anderson was arrested for his involvement in the false buy report. Anderson stated that he was indicted and that he pled guilty to the charge of criminal sale of a controlled substance. He has not yet been sentenced because after he pled guilty he entered into a Cooperation Agreement with the DA [DX 4 is the Cooperation Agreement signed by Anderson]. Anderson stated that no promises were made to him as a result of the Cooperation Agreement. He noted that if he gave false or misleading testimony in this hearing, the Cooperation Agreement would become void.

On cross-examination, Anderson revealed that once he resigned from the NYPD he took a job at the Nassau County Police Department, which he later resigned from as a result of his supervisors being unhappy with the charges against him and because of an alleged cheating incident. Anderson stated that the cheating incident involved an open-book test where individuals sitting around him had previously obtained the answers. Anderson further revealed that while he was a member of this Department he had received charges and specifications for excessive force, abuse, and courtesy and was found guilty of all charges. Anderson denied being absent without leave during his active duty tours with the military in 1997 and 1998. Anderson was rejected by the Seattle Police Department in 1999 after failing a polygraph examination because it was determined that he had stolen money from his employer. He was also denied from the Mesa, Arizona Police Department and the Federal Bureau of Investigations.

Anderson confirmed that his first cooperation for this case was with Queens County in December of 2009, and shortly after Kings County approached him with regard to information. Anderson could not recall having a phone conversation with Detective Stephen Jones in which he stated in sum and substance, "I feel bad about Alan (the Respondent), he's just collateral damage but I have a family and I'm going to do what I have to do." Anderson denied being under investigation by the Nassau Police Department for insurance fraud.

On redirect examination, Anderson stated that none of the undercovers were wearing audio recording devices on the night of the incident since they were patted down before entering the location.

Lieutenant Vito Arditto

Ardito, a 14-year member of the Department, is currently assigned to the 63 Precinct. In January of 2008, Arditto was a sergeant and had been assigned to Narcotics Borough Queens for

approximately one month. On January 5, 2008, Ardito was the supervisor of a buy and bust team and was working with the Respondent, Tavarez, Anderson, and Police Officer Manny Molina. Ardito recalled that while Molina stayed outside the establishment, the other three officers entered Delicias de mi Tierra at approximately 12:45 a.m. in an attempt to purchase narcotics. Ardito stated that each of the undercovers' roles were to be either the primary undercover or the ghost during the operation and the undercovers worked out the roles amongst themselves. Anderson and Tavarez were the primaries and the Respondent was the ghost. The Respondent's duties as a ghost were to be the eyes and ears of the undercovers. The Respondent was supposed to be there for safety and report back to Ardito and the field team of everything that was transpiring.

While the undercovers were working inside Delicias de mi Tierra, Ardito was able to stay in contact with them through the use of the Department's Nextel phone. Ardito stated that the Respondent's first communication was to hold off because the primary undercover had initiated contact with a potential sale of narcotics and it looked as if they were going to make the buy. The Respondent then informed Ardito when the undercovers had successfully purchased the drugs and that six people were going to be arrested. According to Ardito, the Respondent informed him that two people were involved in one incident of a sale and four other people were involved in another incident of a sale. At that point, Ardito did not know which undercovers had made the purchases. Ardito later learned this information "[i]n speaking to both the investigator and the undercovers...while [Ardito] was at the station and after [he] was at the station house."

After the undercovers returned to the station house, their responsibilities were to prepare buy reports, expense reports, and to voucher the narcotics. As their supervisor, Ardito would read the buy reports and ask questions, if need be, along the way. If he approved the buy report,

Ardito would sign it. Anderson, Tavarez, and the Respondent were all located at Ardito's desk while he was reviewing the buy reports from that night. Ardito stated that he approved and signed Anderson's buy report. Ardito later learned, however, that the report falsely stated that Anderson had purchased one bag of cocaine. Tavarez initially told Ardito that he made a buy of cocaine from four individuals, and Ardito approved and signed Tavarez's buy report. Ardito described Tavarez's demeanor at the time as "very proud of himself that he made a purchase of cocaine that evening. He was elated. It was as if he was on cloud nine." Ardito later learned that Tavarez's whole buy report was false.

Ardito said in the month that he had acted as Tavarez's supervisor, he thought of Tavarez as very hard-working, clear and concise, but not very successful in purchasing narcotics. Ardito's opinion of the Respondent was that he was one of the better undercovers, very active, thorough, and a very good worker.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent, a seven-year member of the Department, is currently assigned to the Viper Unit at Police Service Area 2. Prior to his assignment to the Viper Unit, the Respondent was assigned to Narcotics Borough Queens for two years as an undercover. He stated that he had a good relationship with Tavarez at the time of the incident, though he had only known him for approximately a month. At the time of the incident the Respondent knew Anderson for

approximately 18 months and the two got along well. The Respondent, at that time, was a police officer and Anderson, a detective, was the "senior guy."

The Respondent stated that on January 5, 2008 he was working with three other undercovers Anderson, Tavarez, and Molina. He had already made three case buys that day before his field team entered the Delicias de mi Tierra club. He explained that the maximum number of case buys that an officer can make during any given tour is three, as per his undercover training. For this reason, Anderson and Tavarez were the primary undercovers inside the club while the Respondent worked as the ghost. The Respondent recalled that he sat in between the two undercovers, facing the wall, with Tavarez to his right and Anderson to his left.

When asked to describe the layout of the club, the Respondent used the surveillance video to indicate where the entrance of the bar was, located on the far right side of the image. He also indicated the table where the undercovers sat, right next to the entrance. The Respondent, who was wearing a white hat, was located in the front of the bar with the deejay booth behind him. The Respondent stated that his field of vision encompassed the wall located in front of him.

The Respondent testified that when he entered the club, he immediately went to the bathroom to advise the field team that the undercovers were at the location. The Respondent used a Department cell phone to contact Ardit. The Respondent was soon called back from the bathroom by Tavarez because the waiter was already at the table. The Respondent believed that at the time, the other undercovers engaged in a narcotics-related conversation with the waiter. When the narcotics were delivered to the table, the Respondent observed the waiter bringing three Ziploc bags of cocaine to the table. After the drugs were delivered to the table, the Respondent immediately went to the bathroom again to communicate to the field team that the undercovers had made a positive buy. The Respondent stated that he was followed to the

bathroom by Anderson who entered the bathroom with him. While in the bathroom, the Respondent was relaying a positive buy for the waiter and the deejay to Ardito when Anderson told the Respondent that the four guys at the bar were also “good to go.” According to the Respondent, he believed Anderson had made an observation about the four additional men that the Respondent had not seen.

Once the Respondent and Anderson left the bathroom, they resumed sitting at the table and finished their drinks before exiting the location. According to the Respondent, the undercovers returned to their car and drove by the bar for Anderson to give a positive identification on the suspects. After the positive identification, the undercovers drove back to the command, Narcotics Borough Queens. The Respondent described the command as a large office space with multiple desks. The Respondent’s desk was to the right of the entrance with the Department computers approximately 25 feet to the left. Anderson’s desk was located directly next to the Respondent’s. The Respondent stated that he immediately started working on his case buys on his own laptop. He stated that Anderson and Tavarez were working on their buy reports at the Department computers and they did not discuss their reports with him. The Respondent conceded that according to the undercover manual he, as the ghost undercover, was required to prepare a DD-5 for the buy, but he failed to do so. However, he said that the unofficial policy and practice at Narcotics Borough Queens was for ghost undercovers to prepare a DD-5 only when asked by their supervisor. This practice was a way for the Department to curb overtime, according to the Respondent. He said that because his supervisor did not ask him to prepare a DD-5 for the buy and because he had paperwork for his three case buys from the night, he did not focus on the DD-5. The Respondent denied conspiring with Tavarez or Anderson to prepare a false buy report for the buy at Delicias de mi Tierra. He also denied any knowledge of

either Anderson or Tavarez's conspiracy to frame Persons B & C or the other two individuals accompanying them. He stated he was trained to rely on his partners' information so he trusted what Anderson and Tavarez told him.

The Respondent stated that he first learned of Anderson and Tavarez's actions regarding the buy on June 24, 2008, when he first met with IAB. The Respondent stated that he underwent an official Department interview on the case approximately a year and a half after the incident, and he did not have an opportunity to look at the case file or video to prepare for the interview. When Persons B & C brought a lawsuit against the City in this case, the Respondent was deposed. Before his deposition he had the opportunity to review the video with his attorney, as well as parts of discovery. [DX 6 is a transcript of the deposition, dated July 9, 2010.] He has also had the opportunity to review the Department's file in preparation for this trial.

When asked why the Court should believe his testimony, the Respondent replied with the following:

Since I was a little boy, I remember I always wanted to be a police officer and I did everything I could to obtain my goal. I grew up in the Bronx and in a bad neighborhood...and I ma[d]e sure I stayed out of trouble and ma[d]e sure I did well in school....Ever since I became a Police Officer, I always have a good work ethic, never got in trouble up until this incident, this allegation....

I also know what it feels having a family member being arrested for drug possession. My brother was arrested ten years ago for drug possession. I suffered that experience. I saw my mom suffering that experience. I know the stress that a family go[es] through when a family member gets arrested for drug charges....

I know that what happened at "Delicias de mi Tierra", it was wrong. I know it was immoral. I know that it's illegal, but I did not take any part in that incident. I did not comply. I did not participate. I have nothing to do. I only did what I was asked to do. I did my job.

On cross-examination, the Respondent revealed that when he returned from his first trip to the bathroom, he participated in the drug conversation between Anderson and the waiter by helping Anderson with translations. The waiter told the undercovers they needed to wait because the dealers were not there yet. The Respondent stated that he would watch the waiter at some points to see with whom he was engaging in conversation but he did not see who the waiter got the drugs from. The Respondent believed that the waiter threw the narcotics on the table and Anderson picked them up. The Respondent's partners informed him that the waiter got the drugs from the deejay.

The Respondent admitted that if he had prepared a DD-5 on the night of the incident he would have been able to provide the court with more detail about the transaction that he witnessed. When shown Anderson's buy report from the club, the Respondent agreed that it was an accurate description of the night with the exception that Anderson reported that only one Ziploc bag of cocaine was purchased instead of three. The Respondent explained that he believed Anderson had made an observation about the four individuals by the bar that was linked to the legitimate buy with the waiter that night. The Respondent denied ever speaking to any of the four men that were wrongfully arrested. He also denied ever seeing any of the four men speaking with Tavarez. He agreed that Tavarez never left the table that night other than to get the Respondent when he first went to the bathroom. The Respondent denied ever seeing any of the four men speaking with Anderson. He agreed that aside from when he went to the bathroom with the Respondent, Anderson never left the table. He stated that he believed that a buy could have occurred with the four individuals during his first trip to the bathroom.

The Respondent admitted that he did not remember at his official Department interview who specifically told him that the four men were good to go. When asked why he did not state

in the interview that it was Anderson who told him the four individuals were good to go, the Respondent explained that at the time he did not have much recollection of the incident because he had not refreshed his memory by looking at discovery. He said that he did not ask his attorney to postpone the interview since he was not prepared to answer questions because he did not know he had the right to request a postponement. The Respondent said that when he was deposed for the criminal trial, his memory of the incident was better. He acknowledged that since his memory of the incident was incomplete, Tavarez might have been the one who told him the four individuals were good to go. The Respondent then stated that he was "in the bathroom, a hundred percent sure Anderson told me they were good to go."

The Respondent agreed that during the 21 minutes between when he came back from the bathroom and when he returned to the bathroom with Anderson, neither Anderson nor Tavarez ever mentioned to him that the four men were involved in the drug sale. He confirmed that at no time during those 21 minutes did any of the four men approach the undercovers' table or have contact with an undercover. The Respondent said that the undercovers, as they were sitting at the table, were watching the four men because they were part of the whole set and the undercovers were trying to discover the source of the drugs.

On redirect examination, the Respondent explained that because he was sitting facing a wall, Anderson and Tavarez may have seen activity, legal or illegal, that was not in his field of vision.

FINDINGS AND ANALYSIS

The underlying facts are simple and shocking. As the result of an undercover operation, six people were arrested for sale of narcotics. Two of them had indeed sold cocaine but four were completely innocent and had intentionally been falsely accused and arrested.

The undercover operation was conducted on January 5, 2008 at a club in Queens, the Delicias de mi Tierra. Former officers Tavarez and Anderson were the undercover officers whose job it was to attempt to make drug buys while the Respondent was the undercover/ghost.¹ Tavarez and Anderson have both pled guilty to criminal charges related to their actions in the false arrest matter. The Respondent was not charged criminally and denies any knowledge of, or involvement in, the false arrests.

Anderson was the key witness in the Department's case. He claimed that after a period of time in the club, he was able to purchase three bags of cocaine from the waiter who was working with the deejay to sell the narcotics. After that purchase, he, along with Tavarez and the Respondent, agreed to make a second arrest for a drug sale and attribute the arrest to Tavarez. The reason for this, Anderson said, was that Tavarez had worked as an undercover for some time and had not been able to make a buy on his own. He faced, according to Anderson, transfer out of the unit as a result of this lack of activity.

According to Anderson there was a discussion as to which persons were to be the subjects of the false arrests and that the first individuals he selected were rejected. During this discussion, they finally settled on the men who ultimately became the victims of their misconduct: Person D [REDACTED], Person A [REDACTED] and two brothers, Persons B & C [REDACTED].

There is no question that the Respondent, in his capacity as ghost, went to the men's room where he called his supervisor, Ardito, and advised him that there were six drug sellers to be arrested. There is no question that Anderson completed a buy report that listed the purchase of only one bag of cocaine from the waiter and deejay. There is no question that Tavarez signed a buy report that contained a wholly invented narrative regarding the purchase of two bags of

¹ There was another undercover "ghost" outside the club who was not involved in any of the activities inside the establishment.

cocaine from the four men. This narrative set forth an elaborate series of events in which the drug sale was negotiated and in which drugs were transferred to Tavarez while buy money was passed to the sellers. This transaction included a "pat down" of Tavarez by one of the sellers to make sure he did not have "wires." These interactions involved each of the four men in the claimed purchase of the two bags of cocaine.² There is also no question that the Respondent failed to complete a DD-5 report regarding either of the claimed drug buys.

There was some discussion about the credibility of Anderson. As the Respondent argued, Anderson has been involved in a number of "bad acts" which cast doubt on his general credibility. The Department has argued that he is the subject of a Cooperation Agreement with the Queens District Attorney's office and false testimony in this proceeding could lead to his plea agreement being voided. The Respondent countered that the agreement could just as well have caused Anderson to invent allegations against other officers to, in essence, manufacture events in order to gain an advantage by appearing to cooperate with the Department in rooting out corruption.

This Court shares the Respondent's concern about Anderson's credibility. Anderson is a person who, in this case alone, placed petty interests above the substantial liberty rights of four innocent men. He has admitted to doing this on other occasions. There is little reason to believe he would not do so again. Similarly there is every reason to be concerned that he had his own interests in mind when he first told his story about the Respondent's involvement. These

² The narrative is in Tavarez's buy report (DX 3) and sets forth the transaction as follows: After Tavarez entered the club he met with JD (John Doe) Blue Yankee Hat who told him he could get some "powder" (cocaine) but that he would have to pay a premium because he did not know him. Yankee Hat agreed to get him a hundred dollars worth of cocaine. Yankee Hat then walked over to Boston Hat and spoke to him. Boston Hat then approached Tavarez and said, "Let me pat you down for wires." Boston Hat then patted him down. Boston Hat then called over St. Louis Hat, who authorized the sale, saying: "Hook him up." Money was given to Boston Hat who then walked over to White Hat. Boston Hat gave White Hat the money and told him to get two bags. White Hat left for an unknown location. When he returned, White Hat gave the drugs to Yankee Hat who handed the drugs to St. Louis Hat who then handed the drugs to Tavarez.

concerns about Anderson's credibility do not establish that he lied, but they indicate that extreme and great care must be taken before making any decision based on his word.

As will be seen, this Court accepts Anderson's testimony as truthful but this finding is grounded on facts and circumstances that support and corroborate his version of events while undermining the Respondent's version of events.

The Respondent's version of events is that while he witnessed the sale of the three bags by the waiter and deejay, he learned of the existence of the four additional persons to be arrested while he was in the bathroom and after he had told Arditto about the waiter and the deejay.³ He assumed, he said, that there had been some interaction that he had not witnessed and therefore called Arditto to tell him that six people were to be arrested. When he got back to the station house, he was busy writing up his own paperwork on drug buys he had made earlier in the day. He also, he said, did not write a DD-5 for this case because it was not directly ordered and he was on overtime.

Before analyzing the evidence it is necessary to review what is on the video.

The video camera was mounted in the rear of the club, facing the entry door. In the foreground one can see the bar. In the distance the entry door and the deejay area can be seen. The entry to the bathroom is on the left side of the screen opposite the bar.

There are several significant things that can be seen on the video. The first is the entry of three of the victims who arrive before the officers enter the bar. At some point the officers can be seen entering the bar and positioning themselves at a table near the front door, not far from

³ The Respondent testified on direct examination: "When he (Anderson) followed me to the bathroom, I relayed to the Sergeant that we had a positive buy on the waiter and the [deejay], and then Anderson told me that also that the four guys at the bar were good to go, so at that time I didn't think anything of it. I only thought that he made an observation that I didn't see" (Transcript, page 189). On cross-examination, the Respondent agreed that he had previously stated, at his official Department interview, that he could have been told about the four men before he left the table and that Tavarez might have told him about the four men. The Respondent also agreed that at a subsequent deposition that he said that it was "possibly" Anderson that told him. The Respondent insisted at this trial that he was now one hundred percent sure it was Anderson who told him.

the deejay. Shortly after his arrival the Respondent can be seen headed toward the bathroom, only to be called back to the table by Tavarez. The video clearly shows that the Respondent did not enter the bathroom at this time.

The Respondent made a second trip to the rear of the club—he entered the bathroom for the first time where he remained for about two minutes. It is agreed that the Respondent's trips to the bathroom were basically to allow him to call his supervisor, Ardito. When he left the bathroom, the Respondent went back the table where Anderson and Tavarez were seated and the three officers remain at the table for about 20 minutes. There was a drug sale to the undercovers by the waiter, who can also be seen interacting with the deejay. The Respondent returned to the bathroom, joined by Anderson. They remained inside for about four minutes. Anderson and the Respondent then returned to the table, where they remained for about seven minutes before leaving the bar. **Persons B & C** can be seen throughout the entire time at the bar area.

There is no interaction between any of the officers and **Persons B & C** or **Person A** or **Person D**. There is no pat down observed. Certainly the video provided clear evidence that the claimed drug sale by these four men was a lie and indeed it was this video that exposed the false arrests. But the video also provides strong evidence that the Respondent is not being truthful when he claims that he thought that there was some interaction involving the four men that he had not witnessed. As will be discussed in more detail, the video demonstrates that there was no way the Respondent could have believed that a transaction involving the four men occurred.

In evaluating the facts, the first thing to consider is Anderson's claim that for the plan to falsely arrest the four men to work, all three undercover officers had to know about it and be on board. The reason for this is that without the Respondent's active participation in the plan, the Respondent could have revealed it accidentally or intentionally.

Without the Respondent being a part of the plan, Anderson and Tavarez would have had to be concerned that if the Respondent learned of the misconduct he would report it to their superiors or IAB, as he would have been required to do. As will be discussed, the Respondent, even if he was not an active participant in the plot, would have been in a position to fairly readily see that something was amiss so the risk that he might turn them in if he was not included at the outset of the scheme would have been substantial.

The other side of this problem is that even if the Respondent did not intend to turn his brother officers in to the authorities, without his prior knowledge of the plot to falsely accuse the four men, the Respondent would very likely have accidentally revealed the misconduct.

There is ample testimony that the Respondent, as the ghost, was required to prepare a DD-5 about the buys he was supposed to have witnessed. An honest DD-5 listing the purchase of three Ziploc bags of cocaine from the waiter and the deejay would have immediately caused problems – it would have been inconsistent with the buy reports prepared by Anderson and Tavarez in that all of the drugs purchased would have been accounted for with that single sale, leaving no cocaine to attribute to the second sale with the four individuals.

Alternatively, the disclosure could have come accidentally if the sergeant, Ardito, or any other superior officer, inquired as to how the drug buys had occurred (as will be discussed, Ardito testified that such a discussion occurred).

Simply put, the only way this plan could have succeeded is with all three of the officers being active participants from the outset. In that way, everyone was locked in and there would not have been an accidental or intentional disclosure by someone who was in the dark about the plan. In this context, it must be remembered that this plan would likely have succeeded if it were not for the surveillance video taken by the club.

Anderson's claim that the Respondent had to have been a part of the plan to falsely arrest the four men therefore provides a well-grounded basis for accepting his testimony that the Respondent was part of the plan from the inception.

Ardito, who was then a sergeant, was the supervisor of the buy and bust operation. Ardito testified at this trial and no question was raised as to his credibility. Indeed, he appears to be a disinterested and reliable witness. Ardito's testimony provides significant corroboration of Anderson's version of events while directly challenging the Respondent's version.

It was the Respondent's job as ghost to keep Ardito, who was outside the club, informed as to what was going on. The Respondent called him on two occasions. During the first call, the Respondent indicated that the first steps toward making a drug buy had occurred. Ardito testified that during the second call the Respondent told him that there were six people to be arrested and that there had been two separate drug buys. Ardito testified: "The dialogue between himself and I was that two people were involved in one incident and four other people were involved in the other incident of sale."

Ardito said that at that point in time, he did not know which officers had made the buys but that later in the station house he reviewed the matter with all three undercover officers: Tavarez, Anderson and the Respondent. He did this review, he testified, in connection with his review of the buy reports which he was required to sign-off on and which he indeed did sign-off on.

Ardito's testimony that the Respondent was present with the others when he reviewed the buy reports provides independent, direct and reliable evidence that the Respondent had knowledge of and was a participant in the false arrests. This is because the buy reports are at variance with the facts as the Respondent knew them to be. If nothing else, Anderson's buy

report claimed the purchase of only one bag of cocaine from the waiter and deejay, while the Respondent knew about and witnessed the purchase of three bags.

To understand how the first part of what Ardito said—that there were two separate buys, one with two sellers and one with four—contradicts the Respondent's version of events requires an examination of what the Respondent said about the incident. The Respondent contended that he was relying on information provided by his brother officers, Tavarez and Anderson, regarding the involvement of the four men in a cocaine sale. He initially contended that the sale might have occurred while he was in the bathroom calling Ardito. The only trip to the bathroom he could be talking about is the first trip because on the second trip he called in reporting that there were six subjects to arrest.

That first trip to the bathroom lasted a few seconds more than two minutes. This was simply not enough time for a drug transaction involving four men to have occurred. Even the Respondent recognized this during his cross-examination and he said that he thought that the four men were involved in a single transaction with the waiter and the deejay. But that could not have been the case because Ardito testified that the Respondent called in two separate drug buys, one involving two subjects and one involving four subjects. Ardito's testimony thus further supports the notion that the Respondent knew that the drug buy involving the four men was false.

Another reason the Respondent had to have known that the drug buy—whether it was a separate buy or part of the waiter/deejay buy—did not occur is because it was not discussed. The Respondent sat at the table with Tavarez and Anderson for over 20 minutes between the two trips to the bathroom. If the drug transaction had occurred while the Respondent was in the bathroom the first time, there was a full 20 minutes at the table together to discuss it. If the transaction happened while they were at the table, it could have been discussed pretty much

contemporaneously with the event, giving the Respondent an opportunity to visually confirm at least part of it. This would not have merely been a social interaction, but a necessary conversation, as the Respondent was a ghost and had to have this information for safety reasons and to provide backup evidence if there were ever a trial on the sale case. If the Respondent first learned of a transaction involving the four men as he was about to call Ardito to activate the backup team, he would have had to know that something was amiss.

Further, as can be seen on the video, after the second trip to the bathroom that lasted about four minutes, Anderson and the Respondent returned to the table and again sat for about six or seven minutes before they left the bar. If the Respondent had first learned of the involvement of the four men while he was in the bathroom the second time, he could have learned and indeed had a responsibility to learn what their involvement was during this six to seven minute interval. Had he spoken out at that point, the false arrests could still have been prevented. If the Respondent were telling the truth, then his lack of curiosity during this six to seven minute interval would be remarkable. The existence of this interval of time, as confirmed on the video, thus provides further evidence that the Respondent is not being truthful.

As to the Respondent's contention that he was seated at the table facing the wall and that his field of vision was somehow limited to the wall, the video and common sense indicate that this is absurd. First, looking at the video, it is clear that the room is not that large and making observations across the room was possible. Second, it would have been easy to swivel his torso and move his head to see inside the room, at least periodically. Indeed, the Respondent testified that he was making observations of the males who ultimately became victims, so the claim that he could not make observations or that things might have happened outside his ability to see is false.

The evidence establishes that the Respondent's "something might have happened that I didn't see" argument makes no sense.

Another factor to examine is the motive, as it were, for this dreadful act. Anderson testified that Tavarez had worked as an undercover for some time and had been unable to make a buy. Tavarez, Anderson testified, was in danger of being transferred out of the unit. The plan, according to Anderson, was to invent the second false buy and credit it to Tavarez. Ardito testified that after the arrests, Tavarez was "very happy." Ardito went on to say, "[Tavarez] was very proud of himself that he had made a purchase of cocaine that evening. He was elated. It was as if he was on cloud nine." All of this is consistent with Anderson's testimony and Ardito's observations support the credibility of Anderson's account.

While this motive does not directly prove the Respondent's participation, the conduct described was designed to create a bond among the undercover officers, which of course included the Respondent, making his participation in the decision more likely than not.

The only support of the Respondent's claim comes from Tavarez. On June 24, 2008, after authorities learned of the existence of the video, Tavarez was the subject of an official Department interview during which he was questioned by Rodriguez and an Assistant District Attorney, Carmen Gutierrez. In that interview, Tavarez stated, on several occasions, that the Respondent was not involved in the agreement to falsely arrest the four men. Tavarez did not testify at this trial.⁴ The Respondent instead relied on an audio/video recording of that interview, which he put into evidence [RX B].

⁴ Counsel for the Respondent stated that he spoke to the attorney representing Tavarez in the criminal matter about having Tavarez appear to testify. The attorney declined. No request was made to this Court for an administrative subpoena, nor is there any indication that the Respondent took any other steps to compel Tavarez's appearance at this proceeding. Counsel for the Respondent noted that Tavarez has pled guilty in his criminal case and at the time of the trial was awaiting sentence.

Counsel for the Respondent argued that Tavarez “came clean” when he admitted his guilt and is therefore worthy of belief. A viewing of the audio/video recording indicates that Tavarez only gave up what he had to give up. He equivocated about his involvement. He claimed several times that Anderson had prepared the buy report but ultimately conceded he had prepared it. He both denied and admitted signing the buy report. At one point, Tavarez claimed that he did not know the alleged buy from the four men was a “bad buy” until two weeks later, only conceding that he knew earlier that it was false because there is a recitation in the buy report about one of the men patting him down.

There are other parts of Tavarez’s statement that are inconsistent with the testimony of the Respondent and/or Anderson. For instance, he claimed he did not go into the bar to make a buy but that he was the ghost, which is inconsistent with both the testimony of the Respondent and Anderson. Along those lines he, at one point, suggested that he did not have buy money, again because he was not going to make the buy. Indeed, near the end, sobbing as he blamed his problems on everyone else, he complained that he had expected to be taken under the wing of those two more experienced officers.

Like the Respondent, Tavarez switched back and forth from the “separate transaction” to the “it was all part of one transaction” theory by claiming at one point in the interview that “Steve” (Anderson) told him that the four innocent men were getting stash from the deejay, something he should have easily been able to see as he was sitting with Anderson facing out towards the rest of the club and the deejay who was not far away from their table. Further and more significantly, this scenario is totally inconsistent with the buy report he signed which set forth an elaborate series of interactions between him and the four men, and with no mention at all of the deejay.

Tavarez's claims are also undermined by Ardito's testimony. Not only did Ardito testify that he reviewed the content of the buy reports that night with all the officers including Tavarez, he also testified that Tavarez was very happy to have made his first undercover drug buy. As has been noted, this is consistent with Anderson's claim that the reason they invented this "buy" was to give Tavarez his first undercover buy, which he needed to remain in the unit. It is inconsistent with Tavarez's claim that he learned of the falsity of the buy several weeks later and his claim that his problem with a lack of undercover buys had nothing to do with the false arrests.

Additionally, Tavarez's claim in this regard makes no sense. The only possible motive for creating this fictitious "buy" and attributing it to Tavarez was, as Anderson said, to give Tavarez the arrests he needed. Without that, there was no motive to commit this terrible act.

As the assistant Department advocate pointed out in his closing argument, there are many things to question Tavarez about. Tavarez's credibility is very much an issue and the fact that he failed to appear at this trial denied the Advocate an opportunity to test his credibility on cross-examination. It should be noted that an official Department interview statement is unsworn and only subject to Department penalty if false. Tavarez is no longer a member of this Department and any falsity in that statement is beyond the reach of the Department. Testimony at this proceeding would have been under oath. Tavarez's failure to appear and testify under oath raises questions about whether he would stand by the previous statement he made.

Considering all the factors regarding his credibility, this Court finds Tavarez's video statement exonerating the Respondent unreliable and unworthy of belief.

As noted earlier, Tavarez denied and then admitted that he prepared the fictitious buy report. The fact that Tavarez prepared the buy report himself is corroborated by Anderson but it

is also corroborated by the Respondent who testified that he saw each of them using their Department computers while reports were being prepared at the station house.

The only way the detailed fabrication in that report could have been written up was if it was discussed and agreed upon prior to its preparation. This in turn supports Anderson's testimony that there was a discussion at the table in the bar about the fabricated events. This, as has already be noted, is also corroborated by Ardito's testimony that the Respondent called in two drug buys, one from two sellers and one from four sellers. There is, altogether, substantial evidence that the Respondent was a participant from the outset in this criminal conduct.

The Respondent has put forward another line of defense. The Respondent testified about how he had aspired to be a police officer all of his life and how hard he had worked to achieve that goal. During the trial there were numerous spectators, obviously family and friends, present to support the Respondent. After the conclusion of the trial, the Respondent submitted a number of letters from respected past and present members of the service attesting to his good police work, his work ethic and his integrity.

This Court has given careful consideration to these factors in evaluating the facts of this case. There is simply no way that Anderson and Tavarez could have engaged in these false arrests without, at the very minimum, the Respondent's knowledge and consent. Indeed his skills and experience as a police officer make it extremely unlikely that he could have been deceived by Tavarez and Anderson.

The evidence establishes that the Respondent, as charged, "did, with others...,unlawfully conspire and agree together to fabricate the facts leading to the arrest of four individuals..., for criminal sale of a controlled substance." This conduct establishes the crime of Official Misconduct under the Penal Law and certainly was prejudicial to the good order, efficiency and

discipline of the Department in violation of the Patrol Guide. The Respondent is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Again in considering its penalty recommendation, this Court has given careful consideration the many letters of support submitted on the Respondent's behalf. However, given the extraordinary moral, ethical and professional failure involved in this case there is no alternative but to recommend that the Respondent not be allowed to serve as member of this Department. Consequently, this Court recommends that the Respondent be DISMISSED from the Department.

Respectfully submitted,

APPROVED
RAYMOND W. KELLY
POLICE COMMISSIONER
[Signature]
MAR 05 2012

Martin G. Karopkin
Martin G. Karopkin
Deputy Commissioner Trials



POLICE DEPARTMENT

July 25, 2012

SUPPLEMENTAL PROCEEDING

In the Matter of the Charges and Specifications : Case No. 85399/09

- against - :

Detective Alan Figueroa :

Tax Registry No. 933778 :

Military and Extended Leave Desk :

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Martin G. Karopkin
Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Mark Berger, Esq. and Nancy Slater, Esq.
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To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

A report and recommendation in the above captioned matter was submitted on August 17, 2011. Subsequently, it was learned that the Department had not turned over a transcript of testimony taken in the criminal trial of one Sean Johnstone in which Department's witness, Stephen Anderson, had testified. The Department agreed to re-open the case and to re-call Anderson so that he could be cross-examined regarding possible prior inconsistent statements in that case. On June 11, 2012, Anderson appeared in Court and was called to the witness stand. At that proceeding, a broader examination of Anderson was permitted, which included cross-examination on testimony given subsequent to the original Departmental trial. Respondent's counsel was also allowed to place into evidence a number of exhibits.

SUMMARY OF EVIDENCE PRESENTED AT SUPPLEMENTAL PROCEEDINGStephen Anderson

Anderson, who recalled testifying in the disciplinary action in this case and who understood that this was a continuation of the cross-examination of him from that case, was subject to cross-examination by Damien Brown, Esq.¹ Anderson acknowledged that he knew that he been brought back to answer questions about new material. He stated that he knew there was new material and while he had spoken to the Advocate prior to his appearance, nothing specifically was discussed.

Anderson agreed that he had previously testified at the disciplinary trial that Respondent had been part of his criminal activity at the Delicias de mi Tierra bar. He

¹ The Department objected to Brown conducting the examination as it had been commenced by Roger Blank, Esq. who had been the attorney at the disciplinary trial proper. Over the Department's objection I allowed Brown, who, in this proceeding, was co-counsel to Blank, to conduct the cross-examination in this matter. Brown had not participated in the original Department trial.

said that he would not say that it was Respondent's idea to set "all of this" up but that Respondent had said, with regard to Tavarez, "to hook him up."

Anderson could not recall if Tavarez had been promoted to detective when this occurred but noted that it was around the time of his promotion. He agreed that Tavarez had been an undercover officer for about a year and a half.

Anderson agreed that he had testified that he had handed two bags of narcotics, specifically cocaine, to Respondent and that Respondent in turn handed the two bags to Tavarez. He agreed that at the trial in the case of *People v. Sean Johnstone* he had testified that he had handed the bags to Tavarez. He insisted that at the proffer, which preceded all the trials, he had said that he handed the bags to Respondent, who had handed them to Tavarez.

He denied that he had been confronted by the Internal Affairs Bureau (IAB) about his inconsistency. He said that they "just asked me if that was correct what they had put down. I believe it was right prior to the Johnstone's trial and I told them specifically again that it was given to [Respondent] then to Tavarez."

He agreed that he had told IAB and the district attorney's office that the drugs had been handed from Respondent to Tavarez. He did not take notes during his proffer. He agreed that notes were being made during the proffer. He agreed that [IAB Sergeant Victor] Ramirez had been there. Anderson said that he did not specifically say that the notes were wrong but that he reiterated what had been said at the proffer.

Anderson agreed that he had made other allegations against Respondent, including one that involved crystal meth. Anderson agreed that he had alleged that Respondent had not bought drugs inside an apartment but that was what had been

indicated on his buy report.² He explained that, from what he understood, it was the confidential informant (CI) that was with him at the time. Anderson added, "I did not know too many specifics about it."

Anderson also agreed that he had accused Respondent of "setting up or flaking" a female waitress. He did not recall if he had said that there were phone calls between himself and Respondent about this.

Anderson agreed that he had been confronted by IAB about the fact that Respondent had not been working during that buy. He responded, "Yes, but I also stated there was variables of where other things could have happened that night with that." Anderson agreed that he was not sure when it had occurred. He stated that he had told IAB that he thought Respondent was signed out in his memo book from what he had heard but explained he had told them previously that "there would be months that myself and other undercovers wouldn't fill out our memo books for two or three months. I said if there was a possibility, I don't know if that could have happened, or if [Respondent] just happened to be hanging out with us during work time during that night."

Anderson said he had not been told that Respondent was also signed out in the command log. He agreed that he had heard that a buy report regarding a female waitress was made by Detective Molina and not Respondent. Anderson was then asked if he was still saying that it was Respondent who "flaked" the female waitress. He replied, "What I told them was – like I said before – sometimes undercovers would still be hanging out with us afterward, after tour and the possibility that [Respondent] giving it to Molina was a chance, and I said I know specifically because I saw [Respondent] make the buy, but

² Counsel's first question on this issue framed the subject location as a "bar" but later indicated it was an apartment.

what he did afterward, I wasn't aware that he gave it to another officer." Anderson agreed that he was saying that Respondent may have been hanging out with them while they were working.

Anderson agreed that he also made allegations that Respondent in another case had stolen buy money.

Anderson denied ever making allegations against a Detective Campbell. Anderson further denied telling IAB that Campbell was in the car when Johnstone pulled out a stash of drugs. He agreed that at Johnstone's trial he said that Campbell was not in the car. He said that he had told IAB that "maybe the notes of the proffer weren't correct but I had previously stated in the proffer that Detective Campbell stepped out of the car at that time when Detective Johnstone had taken out the drugs from his tin can."

Anderson agreed that he had made allegations against a Detective Aaron Carreras. When asked if he had alleged that Carreras would get one of his CIs to give him drugs and that Carreras would claim he bought them from a lost subject, Anderson replied that yes, he had told them Carreras would use the CI to make purchases. When asked if he told IAB that the CI would show up on a bicycle, Anderson said, "I said several times he would come on a bicycle when I would see him." Anderson was then asked, "Actually, isn't it true that you said you only mentioned coming on a bicycle and you never mentioned any other way that that CI would get there...?" Anderson answered, "No."

Anderson was then asked if at the Johnstone trial he had testified that Carreras' CI would only arrive in a car and that he never mentioned a bicycle. Anderson answered that he did not recall saying that then, nor did he recall saying that at any trial.

That concluded the cross-examination and there was no re-direct examination by the Department.

Respondent was permitted to place the following additional items in evidence.

Respondent's Exhibit (RX) C was a portion of an IAB report containing the following excerpt:

Bureau Chief James Liander did waive criminally on this allegation due to Det. Anderson insisting it was [Respondent] that conducted the buy, although department records reveal that Det. Molina made the purchase and that records reveal [Respondent] was EOT at the time of the buy.

RX D is a portion of an IAB report containing the following excerpt:

Furthermore the below allegation will be amended, due to Mr. Anderson stating that the male Hispanic would arrive via bicycle and not a vehicle and that his name is (name redacted) and not (name redacted).

The original allegation set forth in the report indicates that Anderson stated that he observed Detective Carreras make approximately ten narcotics transactions and that the "male Hispanic would arrive in a vehicle."

RX E is a portion of an IAB report that indicates that the IAB investigator was informed by Liander that a CI and not the undercover officer provided information to the Queens County Criminal Court to obtain a search warrant at one Jorge Flores' residence. The investigator further noted that he was informed that Flores was not charged with criminal sale of a controlled substance to Respondent. The report then sets forth the original allegation that this refers to. In that portion of the report it notes that Anderson

had said that during a crystal meth buy he observed Respondent waiting in the lobby of the building with the CI. It further stated that Anderson affirmed that Respondent had told him on the phone that the dealer was nervous and would not allow him in the apartment but that he would say the purchase had been made in the apartment so that they could get a warrant.

RX F is a three-page portion of the transcript of Anderson's testimony at the trial in the case of *People v. Adolph Osback*. The excerpt is a part of the cross-examination of Anderson regarding statements he made at another trial, the Johnstone trial. The testimony in question regarded a statement he had made regarding another detective, Campbell. In his testimony at the Osback trial, Anderson agreed that he had said that Campbell had gotten out of a car before Johnstone had showed him a can in which Johnstone had kept a stash of drugs for use in apparently phony drug buys.

Anderson denied that he had stated in his proffer that Campbell was in the car when the can was taken out. He said that later in the questioning for the proffer he was told about a statement that Campbell was in the car and he said he told the questioners that that was not what he said and that Campbell had gotten out of the car. Anderson did concede that at the Johnstone trial he had said that Campbell was in the car.

Anderson agreed that after the Johnstone trial, IAB, which was monitoring his testimony, confronted him with the inconsistency. Anderson said that he told them what he had initially said, that "Detective Campbell was not in the car when Johnstone removed that product he was inside the store."

RX G is another portion of the transcript of Anderson's testimony at the Osback trial. The excerpt is part of the cross-examination of Anderson on the issue of what he

had previously testified had occurred at the Delicias bar, in particular who he gave the bags of cocaine to. Anderson recalled testifying at the Johnstone trial that he said he gave the bags to Tavarez. He was then asked about his first proffer agreement:

Question: Okay. And you tell the people in that room, Mr. Liander and Lieutenant Rodriguez and various people in that room that [Respondent] stated to you, hook up Henry with the buy, correct?

Answer: Yes.

Question: And that you understood that to mean, give some narcotics to Henry Tavarez, correct?

Answer: Yes.

Anderson was asked about the original disciplinary trial in this case and he acknowledged that he testified that he gave the bags to Respondent, who then gave them to Tavarez. He was then asked if he recalled testifying at the Johnstone trial and saying that he gave the bags to Tavarez. Anderson replied:

From what I really understood it as, I was just generally saying he was the ultimate receiver of those drugs. In [Respondent's] trial I was giving the more detailed play by play of where the drugs were handed to [Respondent], which then was handed to Tavare[z].

RX H is a portion of the printed proffer agreement that reads in part:

Det. Anderson states that Det. Matt Campbell Tax#926635 stored a vast array of Narcotics' while he worked at NBBS. Furthermore, according to Det. Anderson, Det. Campbell was present when Det. Sean Johnstone Tax#: 928556 demonstrated the chewing tobacco container, with the vast array of Controlled Substances and Marijuana. The time frame for this incident was May 2005.

RX I contains three pages of an IAB report in which the IAB investigator noted that he had obtained the transcript of Anderson's testimony from the trial in the case of *People v. Arbeeny* to see if Anderson made any inconsistent statements or provided any new information. The investigator noted an inconsistency regarding the involvement of a second female in a transaction with Osback.³ The investigator also noted that in his testimony Anderson had said that Campbell had been driving the car and that Campbell exited the car and entered a store to get something to eat and drink. He noted that Anderson testified that it was at that point that Johnstone removed narcotics from the can and stated that it would be used for the buy.

The investigator noted that this contradicted the proffer (see RX H) and he contacted Anderson. With regard to the female he reported that Anderson said "the proffer is incorrect." With regard to Campbell he noted that Anderson stated that Campbell was working but was not present in the vehicle when Johnstone showed the tin with the stash of controlled substances and marijuana. He then read the proffer to Anderson who said that it was incorrect. The investigator noted that based on this information the allegation that Campbell failed to notify IAB of misconduct would be "unfounded."

³ There was no questioning of Anderson at this supplemental proceeding regarding this matter and it was otherwise not raised in this proceeding.

FINDINGS AND ANALYSIS

The purpose of the supplemental proceeding was to give Respondent an opportunity to further challenge the credibility of the Department's witness, Anderson. Anderson testified in several criminal cases. One of the cases, Johnstone, occurred before the disciplinary trial and while the number was never made clear, he testified in several more criminal trials after the conclusion of the original disciplinary trial in this matter. Respondent's counsel also obtained materials turned over in discovery in those criminal trials and was given opportunity to confront Anderson with the material available. He was also given an opportunity to put some of the materials that were received in discovery in the criminal trials into evidence.

Counsel for Respondent argues that various inconsistencies in Anderson's testimony make him unworthy of belief. They allude to several incidents both in the cross-examination of Anderson and in the documents submitted. I will endeavor to identify and discuss each of the incidents.

One of the issues counsel for Respondent highlighted involved statements and testimony Anderson gave regarding Detective Campbell. Chronologically, the first record we have of what Anderson said about Campbell is found in the typed proffer agreement (RX H). The typed proffer states that Anderson had said that Campbell was in the car when Johnstone took out a can in which he kept a stash of drugs and marijuana for use, apparently, in fake buys.

Anderson testified at the Johnstone trial that Campbell was not in the car at the time Johnstone displayed the can with the drugs and marijuana. An investigator from

IAB reviewed the minutes of the Arbeeny trial⁴ to see if there were inconsistencies or new information. He noticed the inconsistency and spoke to Anderson about it.

Anderson, he noted, confirmed that Johnstone was not in the car when the can was displayed and that the proffer was incorrect.

There is no indication that Anderson ever, at any time other than at the proffer, stated that Campbell was in the car when the can of drugs and marijuana was displayed. Anderson denied that he even said that Campbell was in the car at the proffer.

It should be noted that the original handwritten notes of the proffer session are missing. Counsel for Respondent asks that an adverse inference be drawn as a result of the inability of the Department to produce those handwritten notes. The adverse inference would be that the notes said that Anderson had said that Campbell was in the car when the can was displayed by Johnstone. That is, of course, exactly what the available typed proffer says so the inference exists that the notes would reflect the same thing.

Whether Anderson actually said that or the note taker misunderstood what he said, the fact is that Anderson, according to the record in this case, never at any other time said that Campbell was in the car at the moment the can of drugs was displayed. Indeed, the record indicates that he has consistently said that Campbell was not in the car at that moment. Certainly, there is no indication that any disciplinary or criminal action was brought against Campbell as a result of a claim that he was in the car when the can was displayed. On the contrary, the IAB investigator indicated that the charges which had been contemplated were dismissed.

⁴ Anderson was never asked during this proceeding about the Arbeeny trial. The Court notes that the criminal trial of Arbeeny occurred in November 2011 after the original trial in this case which had taken place in June of that year.

Another purported inconsistency raised by counsel for Respondent relates to an allegation Anderson had made with regard to a Detective Carreras. In his testimony in this supplemental proceeding Anderson agreed that he had alleged that Carreras had used a CI to get drugs and then he would claim that the drugs had been bought from a lost subject. Anderson was asked if he had told IAB that the CI would show up on a bicycle. Anderson said that he had told IAB that on several occasions he had seen the CI show up on a bicycle. Anderson denied saying the bicycle was the only way the CI got there.

Respondent introduced into evidence a portion of an IAB report which indicates that in his original proffer Anderson had said that the CI arrived in a vehicle (RX D). The investigator said that the report would be amended to indicate that the CI arrived by bicycle based on further statements by Anderson. He also corrected the name of the CI although both the original name and the replacement name have been redacted. The report also indicates that there had been approximately ten transactions.

Frankly, it is difficult to know what to make of this alleged inconsistency. There is no indication that substantively it has any weight or merit. It is apparent that the proffer covered many, many issues. This issue alone involved approximately ten events. It would not under those circumstances be surprising for some misstatement or misunderstanding to occur.

For the CI to participate in a narcotics purchase he would have had to get to the location somehow. While it is true that most people would assume the vehicle was a car, in fact, a bicycle is a type of vehicle. Anderson clarified that on those occasions when he saw this CI arrive, it was on a bicycle. It is in the end not clear that there was an inconsistency here but a clarification.

It should be noted that Anderson was asked if during the Johnstone trial he testified that Carreras' CI would only arrive by car and that he never mentioned a bicycle. Anderson answered that he did not recall saying that at any trial. Anderson was not confronted with any prior statement or testimony that contradicted what he said at this proceeding nor was any such material offered into evidence by Respondent.

Counsel for Respondent also questioned Anderson about other accusations he had made about Respondent. Anderson agreed that he had accused Respondent of "setting up or flaking" a female waitress. Anderson agreed that he had been told by IAB investigators that Respondent had not been working during that buy. In connection with this allegation Respondent offered into evidence an IAB report which indicated that Respondent was listed as EOT (end of tour) at the time of the incident and that a Detective Molina made the arrest in question (RX C). The report further indicated that the district attorney's office in the person of Bureau Chief Liander, declined to prosecute Respondent on that charge.

In spite of this, Anderson insisted that he had witnessed the event and that Respondent had been involved. He did not know if the Department records were accurate or if Respondent had just been hanging out with them at the time. He also said he had been unaware that Respondent had given the arrest to Molina.

This is not an incident involving an inconsistent statement by Anderson. He has been, as far the record shows, quite consistent. As such, the matter is collateral to the case currently being considered, but as Respondent has raised the issue some discussion is merited.

That Department records show that Molina and not Respondent made the buy is hardly persuasive evidence that Anderson is lying, as in this case, there are Department records produced by this unit, such as the buy report, that contain a detailed and elaborate falsehood.

That Anderson testified that Respondent was present for a buy at a time when he was not on duty is also not shocking in a unit that was functioning by its own rules. Even Respondent, who conceded he did not do DD-5s (Complaint Follow-Up Informationals) in the instant case, noted that the reason was the tight control of overtime.

Counsel for Respondent has argued that the fact that Liander declined to prosecute on this matter is some indication of disbelief of Anderson. There are any number of reasons why a prosecutor might decline to prosecute a criminal case against Respondent or anyone in this matter. For one thing, while the waitress denied doing anything to justify her being arrested, she did plead guilty to disorderly conduct according to the IAB report (RX C). The decision to decline prosecution is hardly evidence that the allegation is false.

This is not to say that Anderson is telling the truth in this instance. That matter is not before me and it is collateral. This entire episode was raised by counsel for Respondent to demonstrate that Anderson is somehow a liar who cannot under any circumstances be believed and the material entered into evidence at this supplemental proceeding fails to establish that.

Similarly, counsel for Respondent has raised an issue regarding a search warrant that was obtained by the unit apparently involving crystal meth. Again, this matter is

collateral, but because counsel for Respondent insisted that it be considered lest his client be denied due process of law, some comment is appropriate.

Anderson agreed that he told IAB that Respondent had lied about being inside an apartment when he made a buy so that he could get a search warrant. Respondent placed a portion of an IAB report into evidence in which it was noted that a CI and not Respondent had provided information for the search warrant (RX E). In his testimony at this supplemental proceeding, Anderson stated that he did not know specifics of the incident. Looking at the original claim by Anderson, as noted in the IAB report, Anderson never said that he saw the transaction. What he saw, according the report, was Respondent waiting in the lobby with the CI. Anderson's claim that Respondent had lied in the search warrant application was based, he said, on a phone conversation with Respondent in which Respondent said the dealer was nervous and would not let him in the apartment but that he would claim the sale had been made in the apartment.

There is simply nothing here that establishes that Anderson lied in what he claimed he observed or lied as to what he claims he was told on the phone. Indeed, either way you look at the circumstances, Respondent did not go into the apartment to make the buy.

Lastly, Respondent has raised the issue that involves an alleged inconsistent statement that applies directly to this case. There is no question that during the trial of this disciplinary matter Anderson testified that there came a point in time after purchased three bags of cocaine from the waiter that he was sitting at the table with Respondent and Tavarez. He testified that Respondent told him, "Why don't you hook up Tavarez," which he took to mean that he should give Tavarez some cocaine so that he could claim

he made a buy. Anderson explained that Tavarez had been having difficulty making buys and there was a possibility that Tavarez would be transferred out of the unit.

Anderson testified at this trial that he gave two bags of cocaine to Respondent, who in turn gave them to Tavarez. Counsel for Respondent claimed that at the proffer and again at the Johnstone trial Anderson had stated that he gave the bags to Tavarez.

That inconsistency involves a statement in the proffer agreement in which it is reported that Respondent stated that he gave the bags of cocaine to Tavarez whereas at this trial he testified that he gave the bags to Respondent, who gave them to Tavarez.

What is important to note is that neither transcript of the Johnstone trial nor the relevant portion of the proffer were offered into evidence. What was offered on this issue was a portion of the transcript of the Osback trial.

In that transcript counsel for Osback asked Anderson a question wherein he purported to read from the transcript of the Johnstone trial.⁵ That question was objected to by the assistant district attorney and the objection was sustained and thus the question was not part of the record. When he was questioned in a more general fashion about his testimony at the Johnstone trial on this issue, Anderson gave the following answer:

From what I really understood it as I was just generally saying he was the ultimate receiver of those drugs. In [Respondent's] trial I was giving the more detailed play by play of where the drugs were handed to [Respondent] which then was handed to Tavarez.

This is, it seems, quite a reasonable explanation. The drugs were, in fact, going to Tavarez who then falsely claimed that he got them as a result of a purchase he made from

⁵ Counsel for Osback appears to have been Damien Brown

four individuals. That false claim by Tavarez was, of course, at the heart of what Anderson was testifying about.

To see how easy it is for this misunderstanding to occur, one only has to look at the evidence regarding the proffer. Again, this portion of the proffer is not in evidence. Counsel for Osback asked Anderson the following questions regarding that proffer:

Question: Okay. And you tell the people in that room, Mr. Liander and Lieutenant Rodriguez and various people in that room that [Respondent] stated to you, hook up Henry with the buy, correct?

Answer: Yes.

Question: And that you understood that to mean, give some narcotics to Henry Tavarez, correct?

Answer: Yes.

Anderson provided a reasonable and accurate answer which is not in conflict with his testimony at the disciplinary trial. The drugs were going to Tavarez, which was the purpose of the transfer. In the end, it is difficult to see that there is really any inconsistency between what Anderson ostensibly said at the proffer and at the Johnstone trial with what he said at Respondent's disciplinary trial; the drugs went to Tavarez, the detailed version is that they were passed along by Respondent.

Given the apparent extent and complexity of the proffer and the number of times Anderson has been called on to testify, the few issues that have been raised about his testimony are unsurprising. Further, none of the issues raised during this supplemental proceeding rise to the level of something that would clearly establish that Anderson is lying in general or that he is lying in regard to this case specifically. Indeed, if anything,

the evidence submitted establishes that, overall, Anderson is quite consistent and was generally careful about what he said.

It should be borne in mind that in my initial report and recommendation I was extremely cautious about accepting Anderson's testimony. Here is what I said on that subject:

There was some discussion about the credibility of Anderson. As the Respondent argued, Anderson has been involved in a number of "bad acts" which cast doubt on his general credibility. The Department has argued that he is the subject of a Cooperation Agreement with the Queens District Attorney's office and false testimony in this proceeding could lead to his plea agreement being voided. The Respondent countered that the agreement could just as well have caused Anderson to invent allegations against other officers to, in essence, manufacture events in order to gain an advantage by appearing to cooperate with the Department in rooting out corruption.

This Court shares the Respondent's concern about Anderson's credibility. Anderson is a person who, in this case alone, placed petty interests above the substantial liberty rights of four innocent men. He has admitted to doing this on other occasions. There is little reason to believe he would not do so again. Similarly there is every reason to be concerned that he had his own interests in mind when he first told his story about the Respondent's involvement. These concerns about Anderson's credibility do not establish that he lied, but they indicate that extreme and great care must be taken before making any decision based on his word.

Nothing in the testimony and evidence presented during this supplemental proceeding has caused me to change that guarded view of Anderson's testimony. In accepting Anderson's testimony regarding this case I noted that its reliability was established by the surrounding facts and circumstances. Here is what I said on that subject:

As will be seen, this Court accepts Anderson's testimony as truthful but this finding is grounded on facts and circumstances that support and corroborate his version of events while undermining the Respondent's version of events.

At the conclusion of the supplemental proceeding Respondent, through his counsel, asked me to re-examine the video recording of the interview with Tavarez. He also asked me to consider the letters of good character he had submitted previously on the issue of credibility. Although I believe this goes beyond the scope of the purpose of the supplemental proceeding, because so much is at stake, and in the interest of fairness, I have re-examined these materials.

In my original report and recommendation I noted that I gave "careful consideration" to the letters of good character and related issues Respondent raised such as his claimed lifelong desire to be a police officer.

I did not discuss the issue further in my original submission. Because counsel has been insistent regarding this matter I note that none of the individuals who wrote these letters was present on January 5, 2008 when four completely innocent people were arrested and charged with possession of cocaine. While I gave the evidence of good character consideration I found it less persuasive than the evidence presented about the events of January 5, 2008.

Counsel for Respondent specifically asked me to look at the letter which purports to be from retired sergeant Mannone. In my original report and recommendation I considered this simply as a good character letter. Counsel for Respondent has asked me to consider the content of this letter.

In his letter, Mannone asserts that Respondent worked under his supervision as an undercover officer from August 2006 to July 2007. He asserts that Respondent had a good work ethic and integrity. Mannone also asserted that Anderson worked for him during that same period of time. He claimed that he suspected Anderson of falsifying narcotic buys. He claims he reported the matter to his commanding officer and IAB.

For whatever reason, Mannone's undated letter, along with all the other good-character letters, were submitted post trial. I am not certain that the matters Mannone mentions in the letter would have been permitted at trial because they are collateral, however if such testimony was permitted it would only have been allowed with the Department Advocate having had an opportunity to confront Mannone through cross-examination. The substance of the Mannone letter is clearly outside of the evidence.⁶

Again, because counsel for Respondent has been insistent that the Mannone letter is of importance and the failure to consider it constitutes some kind of denial of right to his client, I will comment on it.

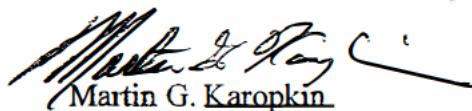
According to his letter Mannone ceased supervising both Respondent and Anderson many months before the incident at the Delicias bar. His letter would suggest that he has no idea of what the relationship between Anderson and Respondent was at the time of the incident. Even if Mannone was correct in his assertion that Respondent was an honest officer when he knew him he could not say with any certainty that Respondent had not become corrupt since his departure.

⁶ In a letter dated August 19, 2011, counsel for Respondent suggested that I invited submission of the letters. It is true at the end of each trial I allow for respondents to make a submission. It is clear in what I say that submission relates to the issue of penalty in the event of a finding of guilt. The full statement is too long to reproduce here but it can be found on pages 287 to 288 of the transcript. In his cover letter to me regarding the submission of the good character letters dated July 7, 2011, counsel for Respondent specifically asked me to consider them on the substantive issue of credibility not penalty.

His opinion about Respondent's character is not as persuasive as the evidence presented at the trial of this case.

Based on everything I have seen and read, I am satisfied that my initial report and recommendation fully addresses the issue at hand. I see no basis to alter or change it other than to incorporate this supplemental report into the full record on the case. I reassert my initial recommendation that Respondent be DISMISSED from the Department

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials

APPROVED

SEP 21 2012
RAYMOND W. KELLY
POLICE COMMISSIONER